Decision

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

PREMIER UTILITY SERVICES, LLC, A WHOLLY OWNED SUBSIDIARY OF USIC LOCATING SERVICES, LLC	)	
Employer	)	
and	)	Case Nos. 29-RC-159452
	)	29-RC-159545[1]
COMMUNICATION WORKERS OF AMERICA, LOCAL 1101	)	
Petitioner	)	

SUPPLEMENTAL DECISION ON CHALLENGES AND OBJECTIONS AND NOTICE OF HEARING

On September 3, 2015,[2] Communication Workers of America, Local 1101, herein called the Petitioner or Union, filed a petition in this matter seeking to represent certain employees employed by Premier Utility Services, LLC, A Wholly Owned Subsidiary of USIC Locating Services, LLC, herein called the Employer.

Pursuant to a Decision and Direction of Election, issued by the undersigned on October 2, an election by secret mail ballot was conducted on from October 20 until November 4, with the count on November 5, among the employees in the following unit:

> All full-time locate technicians, locate helpers and cast iron technicians employed by the Employer, who perform work within the five boroughs of

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1 Case Nos. 29-RC-159452 and 29-RC-159545 were consolidated prior to the issuance of the Decision and Direction of Election on October 2, 2015. Case No. 29-RC-159545 was inadvertently omitted from case related documents after the issuance of the DDE, but it should, in fact, be included.

2 All dates hereinafter are in 2015 unless otherwise indicated.

New York City, Nassau and Suffolk Counties and the Far Rockaway peninsula, but excluding all guards and supervisors defined by the Act.

The undersigned did not determine the eligibility of the quality assurance coordinators and the part-time locate technicians prior to the election. Individuals in these classifications were allowed to vote subject to challenge. The Decision and Direction of Election states that the eligibility of individuals employed in these classifications would be resolved after the election if necessary.

On November 5, the Region had received 4 return ballots. The parties agreed to postpone the count until November 12 in order to allow more time for ballots to be received. On November 12, the Region opened and counted 30 valid return ballots. The Region also received four challenged ballots.

The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	101
Number of void ballots	2
Number of ballots cast for the Petitioner	17
Number of votes cast against participating labor organization	13
Number of valid votes counted	30
Number of challenged ballots	4
Number of valid votes counted plus challenged ballots	34

Challenges are sufficient in number to affect the results of the election.

The Board Agent conducting the election challenged the ballots of Randy Headley, Alison Johnson, Jonnattan Toribio, and James McCoy on the grounds that their names did not appear on the voter list.

The Employer filed a timely objection to conduct affecting the results of the election. The Employer's objection is attached hereto as Exhibit "A."

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the challenges and the Employer's objection, during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

I. The Challenges

The Board Agent challenged the ballots of Randy Headley, Alison Johnson, Jonnattan Toribio, and James McCoy on the grounds that their names did not appear on the voter list.

Randy Headley and Alison Johnson are employed by the Employer as part-time locate technicians. Jonnattan Toribio is employed by the Employer as a quality assurance coordinator. These individuals work in classifications which were directed to vote subject to challenge. The Decision and Direction of Election stated that the eligibility or inclusion of these individuals would be resolved, if necessary, following the election. The challenges to these ballots are determinative, thus rendering a decision on the eligibility of these classifications necessary. Accordingly, I direct that a hearing be held to resolve the eligibility of the part-time locate technicians and the quality assurance coordinators employed by the Employer.

With regard to James McCoy, his name did not appear on the voter list and, accordingly, the Board Agent conducting the election challenged his ballot. The Union asserts that McCoy performs unit work, specifically locating work, and does the same work as other individuals who were included on the voter list. For this reason, the Union asserts that McCoy is eligible and that his ballot should be opened and counted. The Employer states that McCoy is not employed in a unit position, but rather is employed as a shallow fibre inspector. The Employer asserts that McCoy does not perform unit work and specifically denies that McCoy performs locating work.

In view of the conflicting positions and facts asserted by the parties regarding whether James McCoy performs unit work, I find that the challenge to his ballot raises material and substantial issues of fact and credibility that would be best resolved by a hearing. Accordingly, I direct that a hearing be held regarding James McCoy's eligibility.

II. The Employer's Objection

In its objection, the Employer alleges that voters were permanently and impermissibly disenfranchised due to the fact that the Region received so few return ballots prior to the ballot count. Specifically, the Employer states that out of 101 mail ballots sent to eligible voters, the Region received only 32 return ballots, including two duplicate ballots which were not counted. In addition, the Region received the four challenged ballots discussed above. The Petitioner has not taken a position on this objection.

In its offer of proof, the Employer states that 55 named employees will testify that they completed their mail ballots and mailed the ballots in sufficient time for the Region to receive those ballots before the November 4 count. These employees' ballots were not counted on November 12. The Employer does not assert that the Region improperly handled the ballots it received.

The Board has found, "[t]here must be some degree of finality to the results of an election, and there are strong policy considerations favoring prompt completion of representation proceedings." Versail Manufacturing, 212 NLRB 592, 593 (1974); see also Classic Valet Parking, Inc., 363 NLRB No. 23 (2015) (finding that the Regional Director properly excluded mail ballots received after the count as a balance between effectuating employee choice and providing finality of election results); J. Ray McDermott & Co. v. NLRB, 571 F.2d 850, 855 (5th Cir. 1978) (finding that parties have a substantial interest in the finality of representation proceedings). The Board has held that ballots received after the due date but *before* the count should be opened and counted as long as

it does not interfere with the Board's election procedures. In Kerrville Bus Co., 257 NLRB 176 (1981), seven mail ballots were received after the return date for the ballots, but before the count. The Board ruled that all seven ballots should be opened and counted. In so finding, the Board emphasized that the fact that these ballots were received before the count was most significant, thus allowing employees the broadest possible participation "as long as the election procedures are not unduly interfered with or hampered." Kerrville Bus Co., 257 NLRB at 177; see also Watkins Construction Co., 332 NLRB 828, 828 (2000) (in which the Board held that a late ballot should be counted if it is received before the count begins); J. Ray McDermott & Co. v. NLRB, 571 F.2d at 855 (finding the non-receipt of mail ballots does not render a mail ballot election invalid). This case is akin to a case where a voter appears at the polls after the count of ballots. See Versail Manufacturing, 212 NLRB at 593 (in which the Board declined to set aside an election because an over-the-road driver was not able to return from a trip in time to vote in an election). Specifically, the Fifth Circuit has found that the failure of the Postal Service to deliver mail ballots does not necessitate setting aside an election. See J. Ray McDermott & Co. v. NLRB, 571 F.2d at 855 ("It cannot be said that an election by mail is per se invalid whenever a potentially decisive number of votes, no matter how small, is lost through the vagaries of mail delivery.").

The Employer relies on Queen City Paving Co., 243 NLRB 71 (1979), in which the Board ruled that a mail ballot received by a regional office after the closing time for receiving ballots should be opened and counted if it was mailed at a time when the employee could reasonably anticipate timely receipt. The Board did not rule, however, that ballots received *after* the count necessitate a new tally.

The Employer also relies on a case from another regional office in which that region belatedly found six ballots which were timely and properly submitted, and were in the region's safe, but inadvertently had not been counted. Challenges were determinative in that case, and these six

additional ballots were found while preparing for a hearing on the challenges. The region opened and counted the six newly found ballots, which rendered the challenges non-determinative. This case is distinguishable from the instant case where the Region counted all the ballots which were received by the date of the count. There is no allegation or evidence that on November 12, the Region was in possession of additional valid ballots which were not counted.

In the present case, the Region accommodated the parties' desire to allow more time to receive additional ballots by postponing the count for one week. This desire to allow sufficient time to receive mail ballots must be balanced with the interest to complete representation cases in a timely manner and provide finality to the Board's election process. See Versail Manufacturing, 212 NLRB at 593, supra; Classic Valet Parking, 363 NLRB No. 23, supra. Otherwise, mail ballot elections could continue indefinitely, which would be untenable. Accordingly, I overrule the Employer's objection.

SUMMARY

In summary, I have directed that a hearing be held regarding the eligibility of Randy Headley, Alison Johnson, Jonnattan Toribio, and James McCoy. I have overruled the Employer's objection.

NOTICE OF HEARING

Starting at 9:30 a.m. on December 3, 2015, at Two MetroTech Center, 5th Floor, Brooklyn, New York, the hearing on the eligibility of Randy Headley, Alison Johnson, Jonnattan Toribio, and James McCoy will be conducted before a hearing officer of the National Labor Relations Board. The hearing will continue on consecutive days thereafter until completed unless the Regional Director determines that extraordinary circumstances warrant otherwise.

RIGHT TO FILE REQUEST FOR REVIEW

Pursuant to Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Supplemental Decision until 14 days after a final disposition of the proceeding by the Regional Director. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-filed through the Agency's website but may not be filed by facsimile. To E-file the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street, Washington, DC 20570. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Brooklyn, New York, on November 20, 2015.

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Brooklyn, New York 11201

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

PREMIER UTILITY SERVICES, LLC A WHOLLY OWNED SUBSIDIARY OF USIC LOCATING SERVICES, LLC Employer, and COMMUNICATION WORKERS OF AMERICA, LOCAL 1101 Petitioner.	)	Case No. 29-RC-159452

EMPLOYER'S OBJECTION TO CONDUCT AFFECTING RESULTS OF ELECTION

Premier Utility Services, LLC, a wholly owned subsidiary of USIC Locating Services, LLC ("USIC"), objects to the following conduct affecting the results of the November 12, 2015 election in the above-captioned matter as follows:

1. On October 2, 2015, the Region 29 Regional Director issued a Decision and Direction of Election (DDE) in the above-captioned matter, ordering a mail ballot election.

2. The DDE ordered that the ballots be mailed to eligible voters by 5:00 PM on Tuesday, October 20, 2015 and be counted at the Region 29 office on Thursday, November 5, 2015 at 11:00 AM. The DDE stated that, for ballots to be valid and counted, the Region 29 office must receive them by close of business on Wednesday, November 4, 2015.

3. At 11:00 AM, on November 5, 2015, the undersigned, additional Employer representatives, and various Petitioner representatives were present in Hearing Room 1 of the Region 29 office for the ballot count. At that time, Region 29 Board Agent Kimberly Walters ("Walters") notified the parties that the Region 29 office had received just four (4)

ballots, including one (1) that had been hand delivered. Walters stated that she did not know why the Region 29 office had received so few returned ballots.

4. After consulting with the Regional Director, Walters offered that the parties could agree to postpone the ballot count to see if the Region 29 office received additional mail ballots in the interim and stated further that this postponement would not affect the parties' ability to file objections based on the lack of ballots received. The undersigned specifically requested that the Region contact the United States Postal Service to inquire about the delay in mail ballot receipt. Without waiving their right to object to the conduct of the election, the parties agreed to postpone the ballot count one week, until 9:30 AM on November 12, 2015, to allow additional time for ballots to be received.

5. At 9:30 AM on November 12, 2015, the parties reconvened in Hearing Room 1 of the Region 29 office. Without sharing with the parties the number of ballots received, Walters conducted the mail ballot count. Before beginning the count process, Walters read aloud the postmark dates on numerous envelopes, all of which bore October postmarks.

6. Of the 101 mail ballots it sent to unchallenged voters, the Region 29 office received just 32 returned mail ballots, including two (2) duplicate ballots that it did not count. Of seven (7) ballots sent to voters allowed to vote subject to challenge, three (3) were returned. Region 29 received one (1) additional ballot from an employee not on the voter list.

7. Upon information and belief, the Region 29 office did not receive the majority of ballots cast, including tens of ballots timely mailed by voters from various work locations in time for the ballot count. This conduct permanently and impermissibly disenfranchised eligible voters due to conduct outside their control, constituting objectionable conduct affecting the results of the election.

WHEREFORE, based on the above conduct that affected the result of the election, USIC requests that either (a) additional time be allowed to ensure the receipt of all or virtually all mailed ballots, and the additional ballots be counted and added to the November 12, 2015 Tally of Ballots, or (b) the election be set aside and a new election ordered, preferably by manual ballot.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

Cynthia K. Springer

By:_____
Cynthia K. Springer

300 North Meridian Street
Suite 2700
Indianapolis, IN 46204

Attorneys for Premier Utility Services, LLC,
A Wholly Owned Subsidiary of USIC
Locating Services, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by e-mail this 17th day of November, 2015, upon:

Bruce Cooper
Pitta & Giblin
BCOOPER@pittagiblin.com

Michael Palladino
Pitta & Giblin
mpalladino@pittagiblin.com

Cynthia K. Springer

_____

Bd. Exh. 1(a)

FORM NLRB-502 (RC)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 29-RC-159452	Date Filed 9/3/15

INSTRUCTIONS: *Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.*

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)*
USIC LLC	100 Marcus Boulevard, Hauppauge, NY 11788

3a. Employer Representative – Name and Title	3b. Address (If same as 2b – state same)		
Ed Heany, Senior Regional Director	100 Marcus Boulevard, Hauppauge, NY 11788		
3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
(800) 262-8600	(631) 338-2990	(631) 883-4114	

4a. Type of Establishment *(Factory, mine, wholesaler, etc.)*	4b. Principal product or service	5a. City and State where unit is located:
Home dispatch	Utility locating services	New York, New York

5b. Description of Unit involved

Included: All full-time and regular part-time utility locators and helpers

Excluded: all other employees, guards, and supervisors as defined in the Act.

6a. No. of Employees in Unit:

6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes [✓] No [ ]

Check One:

[✓] 7a. Request for recognition as Bargaining Representative was made on (Date) petition and Employer declined recognition on or about _____ (Date) *(If no reply received, so state).*

[ ] 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent *(If none, so state).*	8b. Address		
8c. Tel No.	8d Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)*	

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____

(Name of labor organization) _____ has picketed the Employer since *(Month, Day, Year)* _____

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. *(If none, so state)*

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		11a. Election Type: [✓] Manual [ ] Mail [ ] Mixed Manual/Mail
11b. Election Date(s): September 22, 2015	11c. Election Time(s): noon - 4:00 p.m.	11d. Election Location(s): 100 Marcus Boulevard, Hauppauge, NY 11788

12a. Full Name of Petitioner *(Including local name and number)*	12b. Address *(street and number, city, state, and ZIP code)*
Communication Workers of America Local 1101	275 7th Avenue, 17th Floor, New York, NY 10001

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent *(If none, so state)*
See item 12a above.

12d. Tel No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
(914) 572-1101	(914) 572-1101	(212) 633-8337	

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title Bruce J. Cooper, Attorney	13b. Address *(street and number, city, state, and ZIP code)* Pitta & Giblin LLP, 120 Broadway, 28th Floor, New York, NY 10271		
13c. Tel No. (212) 652-3727	13d. Cell No.	13e. Fax No. (212) 652-3891	13f. E-Mail Address bcooper@pittagiblin.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
Bruce J. Cooper		Attorney	September 3, 2015

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Bd. Exh. 1(f)

FORM NLRB-502 (RC)
(4-15)

Kimberly

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 29-RC-159545	Date Filed 9/4/15

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)*
Premier Utility Service	100 Marcus Blvd #3 Hauppauge NY 11788

3a. Employer Representative – Name and Title	3b. Address (If same as 2b – state same)		
Joseph Rio	same		
3c. Tel. No. (631) 363-6924	3d. Cell No. (516) 805-6299	3e. Fax No.	3f. E-Mail Address josephrio@usicllc.com

4a. Type of Establishment *(Factory, mine, wholesaler, etc.)*	4b. Principal product or service	5a. City and State where unit is located:
Utility Contractor	Locating Services	Nassau&Suffolk county&Rockaway Queens NY

5b. Description of Unit Involved	6a. No. of Employees in Unit:
Included: All Locators in Nassau & Suffolk County & Rockaway Queens NY working in Damage Prevention Excluded: QA Auditor, Supervisors,Mangement and Guards as defined in the act.	35 6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes ☑ No ☐

Check One:
☐ 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) *(If no reply received, so state)*.
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent *(If none, so state)*.	8b. Address		
None	N/A		
8c. Tel No. N/A	8d. Cell No. N/A	8e. Fax No. N/A	8f. E-Mail Address N/A
8g. Affiliation, if any N/A	8h. Date of Recognition or Certification N/A	8i. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)* N/A	

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____

(Name of labor organization) _____, has picketed the Employer since *(Month, Day, Year)* _____.

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. *(If none, so state)*

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
N/A	N/A	N/A	N/A
		10e. Fax No. N/A	10f. E-Mail Address N/A

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		11a. Election Type: ☑ Manual ☐ Mail ☐ Mixed Manual/Mail
11b. Election Date(s): 9/22/15	11c. Election Time(s): 12:00pm - 4:00pm	11d. Election Location(s): 100 Marcus Blvd #3 Hauppauge NY 11788

12a. Full Name of Petitioner *(including local name and number)*	12b. Address *(street and number, city, state, and ZIP code)*
International Brotherhood Of Electrical Workers Local 1049	100 Corporate Drive Holtsville NY 11742

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent *(if none, so state)*
International Brotherhood Of Electrical Workers

12d. Tel No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
(631) 234-1800		(631) 234-1034	ibew1049.org

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title	13b. Address *(street and number, city, state, and ZIP code)*		
William O'Leary, Organizer	100 Corporate Drive Holtsville NY 11742		
13c. Tel No. (631) 234-1800	13d. Cell No. (631) 891-7522	13e. Fax No. (631) 234-1034	13f. E-Mail Address woleary@ibew1049.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
William O'Leary	William O'Leary	Organizer	9/3/15

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PRIVACY ACT STATEMENT

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Bd. Exh. 1(k)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

USIC LLC

Employer

and **Case No. 29-RC-159452**

COMMUNICATION WORKERS OF AMERICA LOCAL 1101

Petitioner

PREMIER UTILITY SERVICE

Employer

and **Case No. 29-RC-159545**

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1049

Petitioner

ORDER CONSOLIDATING CASES AND RESCHEDULING HEARING

On September 3, 2015, Communication Workers of America, Local 1101 filed a Petition in Case No. 29-RC-159542, seeking to represent a bargaining unit consisting of all full-time and regular part-time utility locators and helpers employed by USIC, LLC, at its facility located at 100 Marcus Boulevard, Hauppauge, New York, excluding all other employees, guards, and supervisors as defined in the Act.

On September 4, 2015, International Brotherhood of Electrical Workers, Local 1049 filed a Petition in Case No. 29-RC-159545, seeking to represent a bargaining unit consisting of all locators employed by Premier Utility Service in Nassau and Suffolk County and Rockaway Queens, New York working in damage prevention, excluding QA Auditor, management, guards and supervisors as defined in the Act.

Based thereon, the undersigned issued a Notice of Representation Hearing in Case No. 29-RC-159542 scheduling a hearing on September 14, 2015, and a Notice of Representation Hearing in Case No. 29-RC-159545 scheduling a hearing on September 16, 2015.

On about March 31, 2015, USIC LLC purchased Premier Utility Service, herein after referred to as the Employer. The Employer contends that the only appropriate unit includes the employees sought to be represented in both Case Nos. 29-RC-159542 and 29-RC-159545.

Accordingly, in order to avoid unnecessary costs or delay, pursuant to Section 102.72 of the Rules and Regulations of the National Labor Relations Board, Case Nos. 29-RC-159542 and 29-RC-159545 are hereby consolidated.

IT IS FURTHER ORDERED that the hearings in Case Nos. 29-RC-159452 and29-RC-159545 are rescheduled to Thursday September 17, 2015 at a 5th Floor Hearing Room, 2 MetroTech Center, NLRB 5th Floor, Brooklyn, NY 11201. The hearing will continue on consecutive days until concluded.

YOU ARE FURTHER NOTIFIED that, the above-named Employers must complete a Statement of Position in these matters and file it and all attachments with the Regional Director and serve it on the parties listed on the petitions by no later than noon Eastern time on September 16, 2015. The Statement of Position may be e-Filed but, unlike other e-Filed documents, must be filed by noon Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: September 11, 2015

James G Paulsen

JAMES G. PAULSEN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

R. Exh. 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

PREMIER UTILITY SERVICES, LLC, a wholly owned subsidiary of USIC LOCATING SERVICES, LLC

and Case 29-RC-159452

COMMUNICATION WORKERS OF AMERICA LOCAL 1101

PREMIER UTILITY SERVICES, LLC, a wholly owned subsidiary of USIC LOCATING SERVICES, LLC

and Case 29-RC-159545

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1049

DECISION AND DIRECTION OF ELECTION

The only issue presented in these cases is whether the scope of each of the petitioned-for units is an appropriate unit for collective bargaining.[1] The parties disagree as to whether the

[1] I note that in its position statement, the Employer raised an issue that a copy of each of the filed petitions was not properly served on the Employer. The Employer's position was described more fully at the hearing, wherein it cited the requirements of the Board's Rules and Regulations Sections 102.60(a) and 102.61(a) (6), and claimed it was not properly served due to a failure to include the number of employees in the bargaining unit that each Petitioner sought to represent, i.e. that Section 6(a) of the petitions were blank. Thus, at hearing, the Employer essentially argued that the Petitioners failed to serve *valid* petitions on the Employer. The Employer essentially admits that it received a copy of each petition, albeit without the number of employees in the unit, Section 6(a), filled in. The Employer further admits that while it received a copy of the petition in Case No. 29-RC-159545 with box 6(a) filled in from the Regional office on September 9, 2015, it asserts that the Petitioner IBEW in Case No. 29-RC-159545 has not served a copy of such completed petition on it and that the completed petition was not served on the Employer electronically by either the National Labor Relations Board or the Petitioner IBEW as required. Based on the above, the Employer contends that it was prejudiced as it had no means to determine the number of employees in the petitioned-for bargaining units and that the National Labor Relations Board did not have proper means to determine whether either Petitioner submitted a proper showing of interest to support the petition. First, I note that record evidence, including the affidavits of service marked as Board Exhibit 1(c), dated September 4, 2015, and Board Exhibit 1(h), dated September 8, 2015, show that the Employer was served with copies of the petitions in instant cases by regular and electronic mail. Additionally, Board Exhibit 6 shows that Employer counsel was provided an additional copy of the petition in Case No. 29-RC-159545 on September 9, 2015, via e-mail. Further, Board Exhibits show the initial September 14 and 16 dates for hearing in these cases were rescheduled to September 17 when the cases were consolidated for hearing on September 11, 2015. The Employer's position statements in evidence indicate that the Employer was aware of the units petitioned-for herein prior to hearing and it provided lists

scope of the unit should be two individual units or a combined unit of employees of Premier Utility Services, LLC, a wholly owned subsidiary of USIC Locating Services, LLC ("the Employer" or "Premier"). More specifically, Communication Workers of America, Local 1101 ("Petitioner CWA" or "CWA") and International Brotherhood of Electrical Workers, Local 1049 ("Petitioner IBEW" or "IBEW) contend that the individual petitioned-for units, limited to (1) employees performing work within the five boroughs of New York City exclusive of the Far Rockaway Peninsula (Case No. 29-RC-159452) and (2) employees performing work in Long Island (Nassau and Suffolk Counties) and the Far Rockaway Peninsula (Case No. 29-RC-159545), are each an appropriate unit for bargaining. However, the Employer contends that the only appropriate unit is a combined multi-district unit of its employees who perform work in its New York City and Long Island districts. The parties agree that in either event the appropriate unit should include all full-time locate technicians,[2] locate helpers and cast iron technicians. The parties also agreed that any unit found appropriate by the undersigned will not include a decision regarding whether quality assurance coordinators and part-time locate technicians are included or excluded from the bargaining unit, and that individuals in those classifications, as appropriate, may vote in the election, but their ballots shall be challenged since their eligibility has not yet been resolved.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board law, I find that the petitioned-for units are not appropriate units.

FACTS:

THE EMPLOYER'S OPERATIONS

The Employer is engaged in providing underground utility damage prevention services in multiple States, including New York State. The Employer's New York State operations are part of one Region that is currently divided into three districts: Upstate New York, New York City and Long Island. The Employer's Upstate New York district encompasses counties north of

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naming the employees in the proposed units and separate lists containing the names of unit employees that should be added to the proposed units. With regard to the Employer's assertion concerning the showing of interest, the showing of interest in each of the cases herein was administratively determined to be adequate at the time it was submitted. In this regard I note that the adequacy of a petitioner's showing of interest is an administrative matter and is not subject to litigation. *O.D. Jennings & Co.*, 68 NLRB 516 (1946). Furthermore, I note that the Board has indicated that a failure to fill in such a box on the petition form is, at most a technical defect, and is not a valid basis for an objection to the petition. See e.g. *Petco Corp.*, 98 NLRB 150 (1952) (where the employer contended that the petition was invalid because the spaces provided on the petition form for indicating the number of employees supporting the petition and for showing that a request for recognition was made to the Employer were left blank, the Board found that such technical defects, which were remedied at the hearing and which certainly did not prejudice the Employer, were no basis for any valid objection); *C&M Lumber Co., Inc.* 83 NLRB 1258 (1949) (where it was argued that the petition should be dismissed on the ground that it was incomplete and not in conformity with the Board's rules because the section which calls for the number of employees supporting the petition was left blank, the Board found that, at most, this was a technical defect, which goes to the petitioner's showing of interest, and that inasmuch as it was administratively satisfied that a sufficient number of employees supported the petition, the claim that the petition should be dismissed was without merit). Finally, the parties have stipulated that there is no contract bar or other bar to an election in this matter.

[2] The terms "locate technician" and "locator" were used interchangeably by the parties at hearing and are also used interchangeably herein.

Dutchess County in New York State.[3] The Employer's New York City district includes the five boroughs of New York City, the counties of the lower Hudson Valley (Westchester, Putnam and Rockland Counties) and Dutchess, Sullivan, Ulster and Orange counties.[4] The Employer's Long Island district encompasses Nassau and Suffolk Counties and the Far Rockaway Peninsula.[5] The three districts of New York State are serviced administratively by an office maintained by the Employer in Hauppauge, New York, herein called the Hauppauge facility.[6] With regard to the Upstate district, the Employer maintains additional offices in the cities of Albany and Syracuse. The Hauppauge facility also services a portion of New Jersey, a portion of Massachusetts and Connecticut.[7] Corporate Headquarters are located in Indianapolis, Indiana.

Edward Heaney, the Regional Director of New York State, is responsible for overseeing the day to day operations of the Employer's business in the three districts of New York State. Each of the three districts is supervised by a district manager. The district manager for the Upstate New York district is Joseph Bellela; the district Manager for the Long Island district is Joseph Rio; and the district manager for New York City district is Edwardo Opio. The three district managers report to Regional Director Heaney. Two to five supervisors report to each of the three New York State district managers. Each of these supervisors is responsible for overseeing twelve to fifteen field technicians (i.e., locate technicians, locate helpers, cast iron technicians and quality assurance coordinators).

The petitioned-for areas share a border between Queens (which is part of the Employer's New York City district) and Nassau County (which is part of the Employer's Long Island district). There are approximately 60 to 70 employees in the unit petitioned-for by the CWA, 43 employees in the unit petitioned for by the IBEW and 103 to 113 employees in the combined unit proposed by the Employer.

Premier was purchased by USIC Locating Services, LLC on March 31, 2015.[8] Prior to USIC acquiring Premier, New York City and Long Island were a part of a combined district. [9]

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[3] The record shows that the Employer's Upstate New York district covers the cities of Albany and Buffalo.

[4] While the Employer's Ex. 1 does not show all of the above counties shaded red to indicate they are part of the Employer's New York City district, New York State Regional Director Heaney testified on cross-examination that such counties are part of the Employer's New York City district. While Heaney did not specifically mention Orange county, I take administrative notice that Orange county is not north of Dutchess County (it is south of Dutchess County and thus not part of the Employer's Upstate district, according to the testimony of Heaney). I also take administrative notice that Putnam County is part of the lower Hudson Valley. The Employer did not include the names of employees assigned to these additional counties north of New York City on the list of individuals it contends must be added to the proposed unit, if any, to make it an appropriate unit.

[5] Regional Director Heaney acknowledges that the Far Rockaway Peninsula is technically part of Queens, one of the five boroughs of New York City, but explains that it is designated as part of the Employer's Long Island District for service purposes. In this regard, Regional Director Heaney testified that the service areas of Long Island utilities National Grid and Public Service Electric & Gas (PSE&G) include Nassau and Suffolk Counties and the Far Rockaway Peninsula.

[6] The New York City District Manager's office is located in the Hauppauge, New York facility. 111

[7] After the Employer was acquired by USIC in March 2015, the Employer organized the States of New Jersey, Connecticut and Massachusetts into a new Region, under a different Regional Director.

[8] Prior to March 31, 2015, Premier was a wholly owned subsidiary of a different parent corporation, Willbros, and operated in twenty-six states. USIC Locating Services, LLC operates in forty-six states.

[9] More specifically, before the purchase, Long island, New York City, New Jersey, Connecticut and Massachusetts were under one Region.

Regional Director Heaney testified that the Employer organized New York City and Long Island into two separate districts due to the volume of work in the two districts.

About three years ago, Premier entered into a contract with National Grid to provide services in the New York City and Long Island areas. Premier also took over a PSE&G contract to perform work for Long Island Power Authority, Suffolk County Water and also some other New York City work. At the time, the New York City and Long Island districts were part of one district and there were no boundaries as to where locators would work on a daily basis.

In December of 2014, Premier purchased Empire City Subway and Maintenance ("ECSM"). ECSM had a contract with Cablevision for the New York City area. Cablevision was already a customer of Premier in Long Island. The ECSM work was taken on by the Employer's New York City division and the employees who had worked for ECSM were integrated into the Employer's existing staff. Thereafter, the Employer assigned New York City locators to Long Island to do Cablevision work, and vice versa.

The Employer provides storm services to certain utilities, including PSE&G, National Grid, Cablevision and Con Edison. If a storm hits either New York City or Long Island, locators from New York City or Long Island districts are called upon, regardless of where the damage is. In a typical year, the Employer is called upon two or three times to provide storm service work.

The Employer performs work for Con Edison in New York City only; however, Long Island district employees are trained to perform and do perform Con Edison work.

BOARD LAW

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. To determine whether the single- facility presumption has been rebutted, the Board examines (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866 (2003); *J &L Plate, Inc.*, 310 NLRB 429 (1993).

In its decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), enfd. 727 F.3d 552 (6th Cir, 2013) the Board modified the framework to be applied when a petitioner seeks a unit consisting of employees readily identifiable as a group who share a community of interest, but another party seeks a broader unit. The party seeking the broader unit must demonstrate "that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit." Slip op. at 12-13. The additional employees share an overwhelming community of interest only where there is no legitimate basis upon which to exclude them from the unit because the traditional community-of-interest factors overlap almost completely. Slip op. at 11-12.; *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3 (2011).

The Board did not indicate in *Specialty Healthcare* whether the analytical framework in that case should apply to the issue here, which is whether a single district unit or multi-district unit is appropriate for collective bargaining. Because the framework set forth in *Specialty Healthcare* appears applicable, in addition to analyzing this case pursuant to the Board's traditional five-part test as described above, I will also analyze this case using the *Specialty Healthcare* framework.

Application of Board Law to this Case

In reaching the conclusion that the single-district unit is not appropriate, I rely on the following analysis and record evidence.

1. Central Control over Daily Operations and Labor Relations / Extent of Local Autonomy

The Board has made clear that "the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single local presumption." (citations omitted) *California Pacific Medical Center*, 357 NLRB No. 21, slip op. at 2 (2001). Thus, "centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems." (citations omitted) *Hilander Foods*, 348 NLRB 1200, 1203 (2006). Therefore, the primary focus of this factor is the control that district-level management exerts over employees' day-to-day working lives.

The locate technicians who perform work in the New York City and Long Island districts are all subject to the same personnel policies, employee handbook, [10] starting pay and benefit programs, training,[11] paycheck options,[12] time keeping methods and overtime procedures. The locate technicians in New York City are supported by the same administrative staff and the same quality assurance personnel oversee quality control in both districts. The same recruiting process is utilized for the New York City and Long Island districts.[13] Job assignments (also referred to as tickets) are, at least initially, centrally assigned through the Ticket Pro computer system. The employee handbook also sets forth general procedures in connection with on-call duty and disciplinary policies. Further, while there is distinct supervision in each of the districts in dispute and each district appears to have some autonomy in connection with day to day assignment and direction of locators' work within their primary district, when employees are assigned to perform

[10] The employee handbook applies to all employees companywide.

[11] New employee Pulse training is the same for all new employees in every state and every district. New York City and Long Island new hires attend training classes together and have the same trainers.

[12] Employees are paid on a biweekly basis by direct deposit to their account or a pay card and they have access to electronic records of their pay and benefit information through a company portal.

[13] The same hiring process is followed by the Employer in all states—the Employer's recruiting department works with a third party recruiter. Advertisements are placed, applicants are screened and then determinations are made as to who will be hired. Drug screening, background and motor vehicle checks of applicants in New York City and Long Island are completed by the same companies. A hiring manager or supervisor joins the process at some point but the record does not provide further details.

work in the other district, they work under the supervision of the other (non-primary) district. Thus, locators are subject to supervision by both of the disputed districts, as discussed more fully below.

With regard to the assignment of work, in each district, locators are assigned to a territory for their normal work. On a nationwide basis, excavators are required to call a center before they start a dig. In New York State, there is an 811 call center. Based on calls to this center, tickets or work assignments are created in Ticket Pro, a computer system. The Employer's New York City and Long Island locators receive their work assignments or tickets on their lap top computer through the Ticket Pro system.[14] Ticket Pro initially assigns a ticket automatically based on the locator's territory by longitude and latitude. There is a legal requirement that tickets be completed within 48 hours in the New York City and Long Island districts. As a result of this requirement, locators do not necessarily stop working at the same time every day. Supervisors give direction to locators on when to start and end their shifts according to work load.[15] If the workload in a particular geographical area exceeds the capacity of the locator, the supervisor reassigns work to locators in surrounding territories within the same district. Further, depending on the workloads of the districts, work is reassigned between locators in the New York City and Long Island Districts on a daily basis. In this regard, supervisors and district managers in the New York City and Long Island districts have full access to view assignments on their lap tops to check the distribution of work to locators in both districts and they reassign tickets as they see fit. Significantly, when employees are assigned to the district that is not their primary district, they work under the supervision of the non-primary district. In this regard, two locate technicians who are primarily assigned to the New York City district testified that when they work in the Long Island district, they report to the supervisor in Long Island. Similarly, another locate technician who is primarily assigned to the Long Island district testified that when he works in the New York City district, he reports to the supervisor in New York City.

At times, locate technicians have to respond to emergency calls outside of their regular shifts. While on-call duty is mandatory and general procedures are set forth in the employee handbook concerning response time, time-keeping and over-time, the employee handbook recognizes that there will be some localized practices established to meet the needs of customers while compensating the technicians in a fair manner. Indeed, each district decides how to handle its on-call assignments-- these assignments are made according to scheduling needs, scheduling availability and management discretion. In the New York City and Long Island districts, locate technicians are placed on an on-call schedule on a rotating basis. Monthly on-call schedules are discussed at tailgate meetings.

Thus, in view of the above facts, including that supervisors and district managers in both the New York City and Long Island districts have full access to view assignments on their lap tops to check the distribution of work to locators in both districts and reassign tickets as they see fit, and that locators primarily assigned to one of the districts in dispute are subject to the supervision of the other district in dispute when they are working there, i.e., employees are subject to supervision of both of the disputed districts, I find that the Employer has provided affirmative evidence establishing a lack of autonomy at the individual district level.

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[14] Locators performing certain work in New York City also receive paper copies of prints or scalable drawings that cannot be accessed on their laptop.

[15] The Employer's general over-time policies are set forth in the employee manual.

2. Similarity of Skills, Functions, and Working Conditions

The similarity or dissimilarity of work, qualifications, working conditions, and wages and benefits between locate technicians in the New York City and Long Island districts has some bearing on determining the appropriateness of the single-district unit. However, this factor is less important than whether individual district management has autonomy and whether there is substantial interchange. See, for example, *Dattco, Inc.*, 338 NLRB 49, 51 (2002) ("This level of interdependence and interchange is significant and, with the centralization of operations and uniformity of skills, functions and working conditions is sufficient to rebut the presumptive appropriateness of the single-facility unit.")

Evidence of functional integration is also relevant to the issue of whether a single-district unit is appropriate. Functional integration refers to when employees at two or more facilities are closely integrated with one another functionally notwithstanding their physical separation. *Budget Rent A Car Systems*, 337 NLRB 884 (2002). This functional integration involves employees at the various facilities participating equally and fully at various stages in the employer's operation, such that the employees constitute integral and indispensable parts of a single work process. Id. However, an important element of functional integration is that the employees from the various facilities have frequent contact with one another. Id at 885.

With the exception of working from geographically separate districts, employees based in the districts in dispute share identical skills, functions, and working conditions. These employees perform the same work, share similar qualifications, use the same kind of equipment provided by the Employer, work under the same handbook, are hourly paid with wages determined under the same criteria, are offered the same fringe benefits and record their hours of work using the same procedure on their lap tops.

Locate technicians mark the sidewalks and streets to indicate the presence of utilities before excavators perform a dig to avoid damage to the utilities. All New York City and Long Island locate technicians are trained to locate the same types of utilities—gas, electric cable TV, fiber optics, water and sewer.

Training for inexperienced new hires is mandatory before locate technicians can start working. The Employer's new employee "Pulse Development Program" training is the same for all new employees in every state and every district. The three week classroom training includes training on basic utilities, safety and standard operating procedures. The classroom training is followed by a mentoring program with other locate technicians. New York City and Long Island locate technicians receive the same "Pulse Development Program" training and attend the training class together at the Hauppauge facility. Currently, locators from other districts do not attend new employee Pulse training with the New York City and Long Island new-hires.

During the coaching/mentoring phase of training, newly hired employees are assigned to work in the field with, and are evaluated on a weekly basis by, more experienced locate technicians.[16] The evidence indicates that new employees hired to work in one of the disputed districts are at times assigned to work with an experienced locate technician from the other

[16] The coaching/mentoring phase could last four or five weeks after the three week classroom training.

district in dispute. In this regard, Regional Director Heaney testified that it is not unusual for a Long Island locator to evaluate a newly hired New York City locator or for a New York City locator to evaluate a newly hired Long Island locator.[17] The evaluation forms indicate areas the locators need to improve and affect the timing of the newly hired locate technician's release into the field and being able to work on their own.

New York City and Long Island locators are also required to attend Employer training in preparation for the Northeast Gas Association test. New York City and Long Island locators also receive training at the Con Edison Learning Center. Although the Employer only provides services to Con Edison in New York City, the Long Island employees are qualified inasmuch as Con Edison requires it to have supplemental staff in addition to the staff already dedicated to the five boroughs of New York City. Both New York City and Long Island locators perform Con Edison work. Regional Director Heaney testified that, with a few minor exceptions, all New York City and Long Island locators locate cable for Cablevision and Time Warner Cable, fiber for Lightower Communications, and gas lines for National Grid.

New York City and Long Island locate technicians work in the field utilizing a vehicle, a laptop and supplies provided by the Employer. They go to the Hauppauge facility for training or if they need supplies; they do not go there on a daily basis. Locators can also get supplies from co-workers in the field. Experienced locators generally work alone but will work together on larger jobs and where there are safety concerns, such as locating at major intersections.

Locators meet with their supervisor and co-workers at tailgate meetings in the field at a location designated by the supervisor. These meetings take place on a daily basis in the New York City district and on a weekly basis in the Long Island district.[18] Long Island locators attend New York City tailgate meetings and New York City locators attend Long Island tailgate meetings when they are assigned to work in the respective area.

With regard to wages, Regional Director Heaney testified that the wage rate for new employees is $14 and such wage rate does not differ between New York City and Long Island. Further, Heaney testified that the pay range for New York City experienced locate technicians is the same for Long Island locate technicians. Heaney also testified that wages in the Upstate New York district are a little less than wages in New York City and Long Island districts.[19]

I conclude that there is evidence of a high degree of functional integration and employee contact between the two districts in dispute. Specifically, the Employer's operations are set up to handle surges of work in a limited time frame in these high volume districts which results in interchange of employees between these districts (as more fully described in the section on interchange below) and a substantial degree of coordination and contact between locators in the

[17] The record provides two specific examples of such evaluations performed after a February 2015 training class that was attended by locators hired for New York City and Long Island districts.

[18] At these meetings, supervisors cover various topics including safety behaviors, incidents that have occurred, customer concerns, the monthly on-call schedule and auditing unsafe driving. They also provide direction on procedures such as logging in to access the National Grid and Con Edison prints for New York City or Long Island. The topics covered appear to be a mix of information/instruction concerning centralized policies and procedures and local items.

[19] No party asserts that the Upstate New York district employees are part of an appropriate unit in these cases.

two districts. Locate technicians from both of the disputed districts attend training sessions[20] and tailgate meetings together. Locate technicians who are normally assigned to one of the disputed districts and frequently perform work in the other disputed district are in contact with and supervised by a supervisor of the district to which they have been temporarily assigned. In such situations, they are also in contact with employees of the other disputed district when they need supplies to work in that district. Inexperienced new-hires who are hired to work in one of the disputed districts are assigned to work with, and evaluated by, experienced locate technicians from the other disputed district. In addition there is evidence of transfers between the New York City and Long Island districts.

3. The Degree of Employee Interchange

Employee contact is considered interchange where a portion of the work force of one facility is involved in the work of the other facility through temporary transfer or assignment of work. However, a significant portion of the work force must be involved and the work force must be actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof of the party opposing the single-facility unit. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999). For example, the Board found that interchange was established and significant where during a 1-year period there were approximately 400 to 425 temporary employee interchanges among three terminals in a workforce of 87 and the temporary employees were directly supervised by the terminal manager from the terminal where the work was being performed. *Dayton Transport Corp.* 270 NLRB 1114 (1984). On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. *Cargill, Inc.*, 336 NLRB 1114 (2001); *Courier Dispatch Group*, 311 NLRB 728, 731 (1993). Also important in considering interchange is whether the temporary employee transfers are voluntary or required, the number of permanent employee transfers, and whether the permanent employee transfers are voluntary. *New Britain Transportation Co.*, supra.

Here, the record establishes that a significant portion of the work force moves between the districts which the Employer contends must be in the unit. In this regard, I note that in each district, technicians are assigned to a geographic area or territory for their normal work. For example, Regional Director Heaney testified that Long Island technicians are assigned a particular territory, i.e., Nassau County, Suffolk County or the Far Rockaway Peninsula. Similarly, the New York City technicians are assigned to a particular geographic area of New York City, i.e., one of the five boroughs (but not the Far Rockaway area). The record reveals that locators who are assigned to the Employer's Long Island district also temporarily perform work in the five boroughs of New York City (which area is encompassed by the Employer's New York City district). Similarly, locators who are normally assigned to one of the five boroughs of New York City also temporarily perform work in the Employer's Long Island

[20] As noted above, the Employer cross-trains locators so that they can perform locating work for different utilities in both districts. In this regard, in connection with Con Edison work, the Employer sends Long Island locators to training so they are qualified to perform work as supplemental workers in New York City, in the event they are needed.

district. Indeed, the documentary evidence indicates that during the period from August 15, 2014 to September 2015, about 19 locators primarily assigned to either the Long Island district or one of the five boroughs of the New York City district, completed assignments in the other district or portion of district. More specifically, there were a total of 3,233 assignments completed by locators outside of their primary district. Additionally, three Long Island assignments were completed by the district manager for New York City. Three locators of the Employer testified that their interchange was consistent with the documentary evidence. Further, as noted above in the section entitled "Central Control over Daily Operations and Labor Relations / Extent of Local Autonomy," when the locators temporarily performed work in their non-primary district, they reported to supervisors of the district where the work was being performed.

With regard to transfers between the two districts in dispute, in the last two years, there were four locators who transferred from New York City to Long Island (one of these four then transferred back to New York City again) and there were five locators who transferred from Long Island to New York City and then transferred back to Long Island. Thus, there were a total of 15 transfers between the two districts in dispute by nine locators.

I note that while the New York City district encompasses the five boroughs of New York City and the counties of the lower Hudson Valley (Westchester, Putnam and Rockland Counties) and Dutchess, Sullivan, Ulster and Orange counties, there is no evidence that there is interchange between employees assigned to the five boroughs of New York City and employees assigned to the other counties of the New York City district. Indeed, Regional Director Heaney's testimony indicated that the Employer has not assigned employees from one of the five boroughs to work for the Employer in Westchester, Putnam, Rockland, Dutchess, Sullivan, Ulster or Orange counties.[21] In this regard, I note that the evidence shows that there are eight employees who are assigned to these counties (which are within the Employer's New York City district but north of the five boroughs of New York City). The record does not reveal any instances of locators primarily assigned to Westchester, Putnam, Rockland, Dutchess, Sullivan, Ulster or Orange counties performing work in the five boroughs of New York City or in Long Island. Nor is there evidence of employees assigned to the five boroughs of New York City or Long Island performing work in Westchester, Putnam, Rockland, Dutchess, Sullivan, Ulster or Orange counties. Thus, the interchange factor does not support a finding requiring the inclusion of employees who are based in the Westchester, Putnam, Rockland, Dutchess, Sullivan, Ulster or Orange counties in the unit.

Further, Regional Director Heaney testified that there is no assignment of employees outside of their Region, i.e., between New Jersey and New York, without a transfer. Finally, Heaney testified that there is no interchange of locate technicians between Buffalo West 1 Division (part of the Upstate New York district) and either New York City or Long Island districts.

[21] Heaney testified that there is not much work in these counties north of New York City which are included in the New York City district.

4. Distance between Locations

While significant geographic distance between locations is normally a factor in favor of a single-facility unit, it is less of a factor when there is evidence of regular interchange between the locations, and evidence of centralized control over daily operations and labor relations with little or no local autonomy, particularly when employees at the facilities otherwise share skills duties, and other terms and conditions of employment, and are in contact with one another. *Trane*, supra at 868.

As stated above, the districts in dispute in this matter share a border between Queens and Long Island. Although it may be over one hundred miles from the shared border to the furthest point of Long Island, in view of my conclusions regarding the first three factors, I conclude that the distance between certain points within the districts in dispute does not outweigh the evidence that there is regular interchange between New York City locators and Long Island locators and that when the locators are working outside of their primarily assigned area, they are supervised by supervisors of the district that they are temporarily assigned to, that there is centralized control over personnel policies, benefit programs, training, payroll, and overtime procedures, and that Long Island and New York City locators share similar skills, duties and other terms and conditions of employment.There is also a significant amount of functional integration and employee contact between the employees of these two groups.

5. ***Bargaining History***

The absence of bargaining history is a neutral factor in the analysis of whether a single unit facility is appropriate. *Trane*, supra at 868, fn. 4. Thus, the fact that there is no bargaining history in this matter does not support nor does it negate the appropriateness of the unit sought by Petitioner.[22]

I recognize, but do not find controlling, record evidence that earlier this year, the Employer, in Case No. 03-RC-152247, stipulated to an election in an unit consisting of all full-time and regular part-time locators employed by the Employer in an area limited to its Buffalo, NY West Division. The record also shows that a Certification of Results of Election, showing that a collective bargaining representative had not been selected, issued in Case No. 03-RC-152247 on June 29, 2015. In this regard, the record evidence in the instant case indicates that the Buffalo West Division is self-contained; that New York City and Long Island locators do not perform work in the Buffalo West Division and vice versa; and that locators assigned to the Buffalo West Division rarely locate outside of their territory.

Specialty Healthcare Analysis

Finally, I apply the analysis set forth in *Specialty Healthcare*. Consistent with my conclusion when applying the traditional Board test for multi-location unit issues, I conclude that the units sought by Petitioner CWA and Petitioner IBEW are not appropriate.

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[22] The parties herein stipulated that there is no collective bargaining history between the Employer and either of the Petitioners in connection with the units petitioned-for.

The Employer has demonstrated that the employees based in its Long Island district share an overwhelming community of interest with the employees based in the five boroughs of New York City. In reaching this conclusion, I rely on the evidence that the employees employed by the Employer in the five boroughs of New York City (Petitioner CWA's unit) and the employees employed by the Employer performing work in Nassau and Suffolk Counties which includes the Far Rockaway peninsula (Petitioner IBEW's unit) share similar skills, duties and working conditions. Employees of these two groups automatically receive job assignments from Ticket Pro, a computerized system, based on their geographic location. There is significant interchange between the employees primarily working in the five boroughs of New York City and employees primarily working in the Long Island district and when employees are assigned to perform work in the other district, they work under the supervision of the other (non-primary) district. There is also a significant amount of functional integration and employee contact between the employees of these two groups. Thus, I find the traditional community-of-interest factors overlap almost completely between the two groups and there is no legitimate basis upon which to exclude either from the unit.

Based on this record, a unit comprised of employees who perform work within the five boroughs of New York City, Nassau and Suffolk Counties and the Far Rockaway peninsula would be appropriate for bargaining. Accordingly, I will direct an election in the unit below.

CONCLUSION

In determining that the single-facility units sought by the Petitioners are not appropriate, I have carefully considered the record evidence and weighed the various factors that bear on the determination of whether a single-district unit is appropriate. In particular, in reaching my conclusion that the single-district units sought by Petitioners are not appropriate, I rely on the similarity of skills, duties and working conditions, centralized control of initial job assignments and personnel policies, similar wages, identical benefits, significant interchange, shared supervision and a significant amount of functional integration and employee contact between the employees based in the five boroughs of New York City and Long Island,. Therefore, based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it

will effectuate the purposes of the Act to assert jurisdiction herein.[23]

3. The Petitioner CWA and the Petitioner IBEW are both labor organizations within the meaning of Section 2(5) of the Act. They both claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time locate technicians, locate helpers and cast iron technicians employed by the Employer, who perform work within the five boroughs of New York City, Nassau and Suffolk Counties and the Far Rockaway peninsula, but excluding all guards and supervisors as defined by the Act.
>
> OTHERS PERMITTED TO VOTE: At this time, no decision has been made regarding whether quality assurance coordinators and part-time locate technicians are included in, or excluded from, the bargaining unit, and individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

During the hearing when the parties were asked if they wished to proceed to an election if the undersigned ordered an election in a broader, combined unit, Petitioner CWA indicated its desire to proceed to an election in any unit the undersigned found appropriate. Petitioner IBEW withheld responding until a determination was made. Thus, I will direct an election below, with Petitioner CWA on the ballot, conditioned upon an adequate showing of interest in the expanded unit. **Petitioner CWA must provide an adequate showing of interest in the expanded unit to the Regional Office by October 6, 2015. If Petitioner IBEW wishes to proceed to an election under these circumstances, it must notify the Regional Office and submit any necessary showing of interest by October 6, 2015, and the ballot will be changed accordingly.**

DIRECTION OF ELECTION

[23] The parties stipulated that Premier Utility Services, LLC, a wholly owned subsidiary of USIC Locating Services, LLC, a domestic entity, with an office and principal place of business located in Indianapolis, Indiana, and an office located at 100 Marcus Boulevard, Hauppauge, NY 11788, has been engaged in providing underground utility damage prevention services from the Hauppauge facility. During the past twelve months, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business operations, performed services valued in excess of $50,000 directly to entities located outside the State of New York.

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above, conditioned upon receipt of an adequate showing of interest by Petitioner CWA. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Communication Workers of America Local 1101.

A. Election Details

I have determined that a mail ballot election will be held. All parties agree that a mail ballot election is appropriate in this case and I so find given that the proposed bargaining unit consists of approximately 103 to 113 employees scattered throughout New York City and Long Island.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. By 5:00 p.m. on Tuesday, October 20, 2015, ballots will be mailed to voters from the National Labor Relations Board, Region 29, Two Metro Tech Center, Brooklyn, New York 11201. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by October 27, 2015, should communicate immediately with the National Labor Relations Board by either calling the Region 29 Office at (718) 330-7738 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the National Labor Relations Board, Region 29, Two Metro Tech Center, Brooklyn, New York 11201 on Thursday, November 5, 2015 , 2015, at 11:00 a.m. In order to be valid and counted, the returned ballots must be received in the Region 29 Office, Two Metro Tech Center, Brooklyn, New York 11201, by close of business on Wednesday, November 4, 2015.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **September 27, 2015**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

Conditioned upon receipt of an adequate showing of interest by Petitioner CWA, and as required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. The Employer must also include in a separate section of that list the same information for those individuals who, according to this direction of election, will be permitted to vote subject to challenge.

If an adequate showing of interest is provided, to be timely filed and served, the list must be *received* by the regional director and the parties by **October 9, 2015**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, to be issued subsequently, in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.
Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: October 2, 2015

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, Suite 5100
Brooklyn, New York 11201